appears for the appellant, concedes that there was in fact sufficient evidence before the learned President which, if accepted — and the learned President did accept it — justified a conviction on this charge of inconsiderate driving.

It appears, however, that at the close of the case and after the defence had been concluded the learned President then amended (in fact it would be more correct to say substituted) the charge to a more serious one of negligent driving, contrary to section 4(2) of the Motor Vehicles (Driving Offences) Proclamation.

On the desirability or otherwise of amending a charge in this matter at the conclusion of the case I cannot do better than quote a passage from the judgment of Taylor J. in the case of *Public Prosecutor v. Salamah binti Abdullah*[1]. In the course of that judgment Taylor J. said :—

"Now the proper time to amend a charge is at the close of the prosecution. This is expressly provided by Section 173(h) (Section 182(h) of the Settlement Code) of the Code which, indeed, not merely authorises but positively requires the Court to consider the charge at that stage and, if necessary, amend it. It is true that a charge can be altered at any stage and the alteration in this case, late though it was, is not illegal in the sense that it was not in accordance with the Code but in my view it was in the circumstances unjust. It was not an amendment but a substitution and further, it was the substitution of a (much) more serious charge."

I respectfully associate myself with that passage, and in my view, it applies entirely to the circumstances of this case.

The appeal is, therefore, allowed to the extent that the conviction is altered from one under section 4(2) of negligent driving to one under section 5 of driving without reasonable consideration. The fine of $50 will stand, but since there is no power to endorse a licence on a conviction under section 5 the order for endorsement must be set aside.

Order accordingly.

PUBLIC PROSECUTOR v. DE FONSEKA

[A. Cr. J. (Smith J.) September 7, 1956]

[K.L. — Criminal Appeal No. 37 of 1956]

Penal Code s. 197 — False medical certificate of unfitness — Meaning of "false" — Whether certificate required by law — Admissibility.

Employees Provident Fund Ordinance, 1951 ss. 13, 20 & 21 — Withdrawal of credit funds — Employees Provident Fund Rules, 1952, rr. 19 & 20.

The respondent, a registered medical practitioner, gave three medical certificates each to the effect that the person named therein was no longer capable of being employed and not likely to be employed again when it appeared that they had not in fact been examined by him. Those certificates were then used to obtain from the Employees Provident Fund the return of the amount standing to the credit of the persons named in each certificate. The respondent was charged on three similar charges of which the first read: "That you on 19th September, 1955 at Kuala Lumpur, in the State of Selangor, issued a certificate required by law to be given knowing that such certificate is false in a material point to wit that Chan Ah Kok was no longer capable of being again an employee and thereby committed an offence punishable under section 197 of the Penal Code."

At the close of the prosecution's case, the learned President of the Sessions Court acquitted and discharged the respondent on the ground that the medical certificates were not required by law to be given and were not by law admissible in evidence, being certificates submitted for consideration only which the Employees Provident Fund Board need not accept if the Board felt so inclined. On appeal,

Held: (1) a certificate of unfitness signed by a medical practitioner is required by law to be given when application for withdrawal is made on grounds of medical unfitness and such a certificate is medical evidence for the purpose of section 13(1)(c) of the Employees Provident Fund Ordinance, 1951;

(2) as the respondent had not examined the persons named therein a certificate given in such circumstances is "false", even if by chance the certificate is correct in all details since the giver of the certificate does not know it to be true and is therefore without knowledge or grounds for belief;

(3) for an offence under section 197 of the Penal Code it is not necessary to show that it is incumbent on the signatory as a requirement of law to sign the certificate;

(4) the medical certificate is admissible in evidence as such certificate without further proof, as the Employees Provident Fund Board could accept the certificate as evidence of unfitness to prove its truth (**Prafulla Kumar Khara & Anor. v. R.**[1] distinguished).

Held, further: as section 20(1)(f) of the Employees Provident Fund Ordinance confers on the Board the power to prescribe evidence for the purposes of section 13 of the aforesaid Ordinance there was equally evidence to support a charge against the respondent of "signing a certificate relating to a fact of which such certificate is by law admissible in evidence" under section 197 of the Penal Code.

Case referred to :—

(1) *Prafulla Kumar Khara & Anor. v. R.* A.I.R. (30) 1943 Cal. 40.

MAGISTRATE'S CRIMINAL APPEAL.

E. Brown (Federal Counsel) for the appellant.

R. P. S. Rajasooria for the respondents.

Smith J. : — The respondent was charged on three similar charges of which the first read as follows :—

"That you on 19th September, 1955 at Kuala Lumpur, in the State of Selangor, issued a certificate required by law to be given knowing that such certificate is false in a material point to wit that Chan Ah Kok was no longer capable of being again an employee and thereby committed an offence punishable under section 197 of the Penal Code."

Evidence led by the prosecution was to the effect that the respondent, a registered medical practitioner, had given three medical certificates each to the effect that the person named therein was no longer capable of being employed and not likely to be an employee again. The person named in each certificate gave

evidence that he had not been examined by the respondent. There was evidence that when the respondent signed two of the certificates he signed them without examining any person (page 16 PW 9 and page 18 PW 11). Use was made of these certificates to obtain from the Employees Provident Fund the return of the amount standing to the credit of the persons named in each certificate.

The learned President held that there was no case to meet because the medical certificates were not required by law to be given and were not by law admissible in evidence, being certificates submitted for consideration only which the Employees Provident Fund Board need not accept if the Board felt so inclined.

The learned President acquitted and discharged the respondent against which order the Public Prosecutor now appeals.

Section 197 of the Penal Code reads as follows :—

"Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence."

It is necessary to examine the Employees Provident Fund Ordinance, 1951 and the Rules made thereunder to establish whether a medical certificate is required by law to be given.

Section 13(1)(c) of the Ordinance (No. 21 of 1951) reads as follows :—

"No sum of money standing to the credit of an employee may be withdrawn from the Fund except with the authority of the Board and, subject to any regulations and rules made under sections 20 and 21 of this Ordinance, such authority shall not be given unless the Board is satisfied that —

* * * * * *

On medical evidence, the employee is no longer capable of being, and is not likely to be again, an employee; . . . . . ."

It will be noted that "medical evidence" is required. Section 21 (e) and (f) confers the following powers on the Board :—

"The Board may, in addition to the other duties imposed and powers conferred upon it under this Ordinance, make rules:

* * * * * *

(e) to prescribe the procedure for the withdrawal of amounts from the Fund;

(f) to prescribe the evidence to be produced and the person, officer or authority to whom such evidence is to be produced for the purposes of section 13 of this Ordinance; . . . . ."

The procedure and the evidence are prescribed under the Employees Provident Fund Rules, 1952 (LN 404/52). Rule 19(1) states :—

"A contributor wishing to withdraw any amount standing to his credit in the Fund, or where the contributor has died, the person claiming to be entitled under the Ordinance and the Regulations to the amount standing to the credit of the contributor, shall give notice to the Board in the Form EPF. 9 set out in the Schedule to these Rules."

and rule 20(2)(a) and (b) read :—

"Where the application is based upon the ground of medical unfitness the contributor shall forward with such notice a certificate signed by a medical practitioner, in support of his application.

If the Board is not satisfied by any medical evidence produced by the contributor the Secretary may appoint one or more medical practitioners as a Medical Board to examine the applicant and to report thereon and may require such applicant to appear before such Medical Board and be examined at such time or place as the Medical Board may appoint."

It is, in my opinion quite clear that a medical certificate of unfitness signed by a medical practitioner is required by law to be forwarded with an application to withdraw (Rule 20(2)(a)). That that certificate is to be regarded as evidence is clear from sub-paragraph (b). Furthermore section 13(1)(c) requires medical evidence and quite clearly rule 20(2) prescribes the evidence.

My attention has not been drawn to nor have I been able to find any prescribed form which the medical certificate must take. (I agree with the learned President that it is probably desirable that there should be one).

On a review of the statute law it appears a certificate of unfitness signed by a medical practitioner is required to be forwarded to the Board when application for withdrawal is made on grounds of medical unfitness and that such a certificate is medical evidence for the purpose of section 13(1)(c) of the Ordinance and is required by law to be given.

It is now necessary to consider the arguments of learned Counsel for the respondent. His first point was that it was the duty of the prosecution to prove that the certificates were false and that the doctor knew that the persons who came before him were not the persons referred to in the medical certificates. There appeared to me to be some confusion of thought here. The evidence before the Court shewed that the persons named in the certificates had not been examined by the respondent and that in two cases there was direct evidence that the certificate was given without any medical examination. This submission might be valid if the respondent had been called upon for his defence and had given evidence that he had examined persons in respect of each certificate and that when he signed the certificates he signed in good faith believing that the persons whom he examined had given him their true names. If believed, such a defence might be good. The evidence before the court at the close of the prosecution was that the persons named had not been examined and in two cases the certificates had been handed over without any person being examined. There was no evidence whether any person had been examined

in respect of the third certificate: since the person named gave evidence that he had not been examined, then *prima facie* no person had been examined by the respondent.

With regard to the argument that the prosecution must prove that the certificates are false to the knowledge or belief of the respondent I consider that this has been done. There is no special definition of "false" in section 197. Its meaning for the purposes of Chapter XI can be culled from Explanation 2 of section 191. Reading the essential parts it is stated that :—

". . . . a person may be guilty of giving false evidence . . . . by stating that he knows a thing which he does not know".

The respondent not having examined the persons did not know whether the persons were fit or unfit. In my opinion a certificate given in such circumstances is "false" even if by chance the certificate is correct in all details since the giver of the certificate does not know it to be true and is therefore without knowledge or grounds for belief.

The next argument is that the words "by him" must be read by implication after the words "required by law to be given or signed" appearing in section 197 of the Penal Code. Counsel for the respondent submitted that it must be shewn to be incumbent on the medical practitioner as a requirement of law to sign the medical certificate. I cannot accept this argument. I consider that the intention of the legislature is quite clear. It is only when the meaning of a statute is not plain that it is permissible to have to recourse to a construction by implication and to supply omissions. The general rule is "not to import into statutes words which are not to be found there." (See *Craies* on Statute Law, 3rd Edn. page 102). In this case it is possible to construe the section intelligently without the addition of any word. If any person is foolish enough or criminal enough to sign a certificate which he knows to be false and that certificate happens to be one which is required to be given by some particular law then he is guilty. In my view he is rightly guilty since it would be absurd for the person signing to avoid punishment by ensuring that he remains ignorant of the purpose for which the certificate is required. *Ignorantia juris non excusat.* All persons are deemed to know that a medical certificate is required by law to be given by a contributor to the Employees Provident Fund claiming refund of his credit on the ground of future incapacity for work.

I am fortified in my view of this interpretation by the comparisons cited by the learned Deputy Public Prosecutor. Had the legislature intended the words "by him" to be there they could have been inserted. If it were necessary to prove that the person signing must be required by law to sign I consider that the form of sections 174 — 177 would have been used and that section 197 would have started — "Whoever, being legally bound to issue or sign any certificate required by law to be given or signed .....".

Counsel for the respondent relied principally on the case of *Prafulla Kumar Khara & Anor. v. Emperor*[1]. The facts of this case were that one Bhusan Chandra Khara who was petitioner 2 in the case was an accused before a Magistrate summoned to appear on a certain date. On that date, he was absent and a petition was filed in Court supported by a medical certificate granted by petitioner 1, Prafulla Kumar Khara who is a nephew of petitioner 2 to the effect that the accused person was suffering from renal colic since the previous day and was under his treatment and unable to appear. The complainant in the case challenged the fact of the illness of the accused and as a result both the uncle and the nephew were placed on their trial. The nephew was charged under section 197, Penal Code, and the uncle under section 198 on the allegation that the one issued or signed a false medical certificate and the other used it. Both men were convicted and appealed against these convictions. The appeals were allowed because :—

". . . . what section 197 contemplates is that the certificate should by some provision of law be admissible in evidence as such certificate without further proof. We are accordingly of opinion that both on a correct construction of section 197 itself and in view of the available authorities a medical certificate is not a certificate relating to any fact of which such certificate is by law admissible in evidence . . . ."

In this present case the medical certificate was admissible in evidence as such certificate without further proof. The Board could accept the certificate as evidence of unfitness without calling the doctor who signed the certificate to prove its truth. *Prafulla's* case is distinguishable.

I am satisfied that there was a case to answer on the charge as framed. The respondent, on the evidence so far before the Court, issued a certificate (that is put forth the certificate for the purpose of its being used), which certificate was required by law to be given.

There was equally evidence to support a charge under the second half of the section that the respondent "signed a certificate relating to a fact of which such certificate is by law admissible in evidence." Learned counsel argued that no charge lay here because "admissible in evidence" meant "admissible in evidence before a court of law". I cannot agree with this submission. The Ordinance in section 20(1)(f) confers on the Board the power to prescribe evidence for the purposes of section 13.

I do reverse the decision of the learned President and do order that the trial of the respondent upon the present charges do continue by the learned President calling upon the respondent for his defence.

Order accordingly.